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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,555	02/24/2004	Cary B. Cochenour	040073	8139

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EXAMINER

WILLIAMS, KENNETH C

ART UNIT PAPER NUMBER

3739

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/785,555

Applicant(s)

COCHENOUR ET AL.

Examiner

Kenneth C. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 30, 2005 has been entered.

### ***Response to Amendment***

2. The declaration and supporting statement filed on December 30, 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Park reference.

3. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Park reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

The evidence did not meet the guidelines to establish satisfactory evidence of the facts as stated in MPEP 715.07. Specifically, the Supporting Statement of Witness to Factual Evidence states, "On the evening of January 11, 2003, Cary B. Cochenour and Craig G. Cochenour showed to me the drawings of their invention that are now

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generally shown in Figures 1 and 2". These drawings that are stated to have been drawn on January 11, 2003 are not a part of the submitted exhibits. Therefore, the submitted declarations and exhibits have not overcome the Park reference.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-5 and 7-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Park (U.S. Patent Application Publication No. US 2004/0195227) in view of Ligeras (U.S. Patent No. 5516189).

- a. In regards to Claims 1 and 14, Park discloses a patient activated temperature-controlled surface or an animal bed comprising "a floor" (See Park Figure 5, element 55), "a temperature source capable of supplying either heat or cold, or both, to said floor" (See Park Figure 5, element 20; See also Paragraph

[0025], Lines 1-7), "an actuator element" (See Park Paragraph [0029], Lines 1-5) and "an electric cord" (See Park Figure 3, element 25).

Park does not disclose to use of "non-direct electrical current from an electric utility". Attention is directed to the Ligeras reference, which in an analogous field of endeavor discloses, "wiring is provided, fully within the capability of those presently skilled in the electrical connection arts, so that the switch 22 converts from AC to DC (and in a reverse direction) in order to accommodate both AC power and plug 24, and DC power and plug 26" (See Ligeras Figures 1 and 4, References 24 and 26; see also column 2, lines 44-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device of Park with the ability to utilize electrical current from an AC power source because the device could be used in the home where it would be preferable to use an AC power source.

b. In regards to Claim 2, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 1 Rejection). Park further discloses "said actuator element is capable of allowing or preventing the flow of said non-direct electrical current to said temperature source" (See Park Figure 1, element 23; see also Paragraph [0029]). It is the Examiner's position that the actuator element of Park would be capable of operating to allow or prevent the flow of non-direct current as shown in the Ligeras reference.

c. In regards to Claim 3, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 1 Rejection). Park does not disclose,

"said electrical cord is connected to an electric utility supplying alternating current". Attention is directed to the Ligeras reference, which in an analogous field of endeavor discloses the use of an electrical cord in an alternating current outlet (See Ligeras Figure 4, element 24). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device of Park with the ability to utilize electrical current from an AC power source because the device could be used in the home where it would be preferable to use an AC power source.

d. In regards to Claim 4, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 1 Rejection). Park further discloses "wherein said temperature source is located in juxtaposition to said floor, and wherein said floor allows said heat or cold to pass from said temperature source through said floor and wherein said actuator element is located in juxtaposition to said floor" (See Park, Figures 2 and 5).

e. In regards to Claim 5, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 1 Rejection). Park further discloses, "wherein said actuator element provides an electrical bias" (See Park, Figure 1). It is the Examiner's position that electrical bias is equivalent to "open circuit".

f. In regards to Claim 7, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 1 Rejection). Park further discloses, "wherein said actuator element is a pressure sensitive switch" (See Park Paragraph [0020], Lines 4-5).

g. In regards to Claim 8, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 7 Rejection). Park further discloses, "wherein said switch is a momentary switch" (See Park Paragraph [0029], Lines 1-5; See also Paragraphs [0034] and [0035]).

h. In regards to Claim 9, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 4 Rejection). Park further discloses, "wherein said temperature source is located beneath said floor" (See Park Figure 5, Reference 20).

i. In regards to Claim 10, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 1 Rejection). Park further discloses, "wherein said floor is a bed for accommodating the resting of a patient" (See Park Paragraph [0037], Lines 1-2).

j. In regards to Claim 11, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 10 Rejection). Park further discloses, "wherein said bed is surrounded by at least one wall" (See Park Figure 5, Reference to upright seat portion).

k. In regards to Claim 12, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 11 Rejection). Park further discloses, "wherein said wall has at least one opening that allows for the ingress and egress of the patient in and out of said bed" (See Park, Figure 5, Reference to upright seat portion – Examiner reads lack of wall on three sides of cushion to be "at least one opening that allows for the ingress and egress of the patient").

l. In regards to Claim 13, Park in view of Ligeras discloses a patient activated temperature-controlled surface (See Claim 1 Rejection). Park further discloses, "wherein said temperature source includes an adjustable thermostat" (See Park, Figure 1, Reference 15; See also Paragraph [0027], Lines 1-4).

m. In regards to Claims 15-20, the method steps of providing comfort to a patient are considered obvious in the operation of the device disclosed by Park in view of Ligeras.

Park does not disclose to use of "non-direct electrical current from an electric utility". Attention is directed to the Ligeras reference, which in an analogous field of endeavor discloses, "wiring is provided, fully within the capability of those presently skilled in the electrical connection arts, so that the switch 22 converts from AC to DC (and in a reverse direction) in order to accommodate both AC power and plug 24, and DC power and plug 26" (See Ligeras Figures 1 and 4, References 24 and 26; see also column 2, lines 44-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device of Park with the ability to utilize electrical current from an AC power source because the device could be used in the home where it would be preferable to use an AC power source.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Park (U.S. Patent Application Publication No. US 2004/0195227) in view of Ligeras (U.S. Patent No. 5516189) as applied to claims 1-5 and 7-20 above, and further in view of Goldston et al. (U.S. Patent No. 5303485).



In regards to Claim 6, Park in view of Ligeras discloses a patient activated temperature controlled surface (See Claim 1 Rejection). Park in view of Ligeras does not disclose, "wherein said actuator element is a transistor". Attention is directed to Goldston et al. reference, which provides an alternative solution to a pressure sensitive switch, discloses the use of a transistor in place of a pressure sensitive switch (See Goldston et al., Column 9, Lines 4-15). It would have been obvious to one of ordinary skill in the art at the time the invention to modify the Park in view of Ligeras device with the teaching of Goldston et al. to provide a transistor as the actuator to provide a more sophisticated switching means responsive to the presence or absence of the weight of a patient.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth C. Williams whose telephone number is (571) 272-8161. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

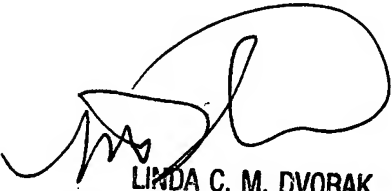
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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KCW



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